IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4873 OF 1998

Tatyasaheb Chandrabhan Shinde
& another .. Petitioners

versus

Tahsildar, Karmala Taluka
District Solapur & ors. .. Respondents

...

Mr.S.G. Kudle for the petitioner.

Mr.V.S. Gokhale, AGP for respondent nos.1 to 3.

CORAM : S.B. MHASE, AND
D.G. KARNIK, JJ.
DATED : 21st February 2006.

P.C.:

1. By this petition, the petitioner challenges notification inviting offers for allotment of a fair price shop at Village Kolgaon, Taluka Karmala, District Solapur.

2. The petitioners are the chairman and the secretary respectively of Kolgaon Village, Karyakari Seva Sahakari Society Limited (for short "the society") which is a co-operative society registered under the Maharashtra Co-operative Societies Act 1960. The society was running a fair price shop at village Kolgaon for many years. The elections to the post of managing committee of the society were to be held in December 1997 and an election programme was published on 26th November 1997. A day prior to the publication of the election programme the then chairman of the society, apprehending that he and his body would not be elected, made an application for surrendering the fair price shop on the ground that the society was incurring losses in running it. Immediately, thereafter the secretary of the society informed the Tahsildar pointing out that the society had not passed any resolution for surrendering of the fair price shop and that the application made by the then chairman was without authority. He also pointed that the copy of the alleged resolution of the managing committee for surrender of the fair price ship annexed to the application was forged and no such resolution was ever

passed. Despite the letter of the Secretary pointing out that the Society had not passed any resolution surrendering the fair price shop, the Tahsildar appears to have accepted the application of the then chairman of the society for surrendering the fair price shop. Thereupon, he issued a public notification dated 25th August 1998 inviting applications from the interested persons to run the authorised fair price shop. In the said public notification, he mentioned that the applications were invited as the society had submitted the resignation. That public notification is impugned in this Writ Petition.

3. Apart from intimating the Tahsildar about the illegal actions of the then chairman the secretary of the society also made an application to the Assistant Registrar of Co-operative Societies pointing out that the then chairman was falsely claiming that the society had passed a resolution for surrendering of the fair price shop. The Assistant Registrar, Co-operative Societies investigated the matter and came to the conclusion that the society had not resolved to surrender the fair price shop and by his letter dated 31st December 1997 informed the Tahsildar that in his enquiry he found that there was no entry in the

proceedings book of any resolution for surrender of the fair price shop and on the relevant date no meeting of the managing committee was held, no agenda of the meeting was published and no resolution for surrender of the fair price shop was passed. Thus, the concerned Officer of the co-operative department has on enquiry come to the conclusion that the society had not passed any resolution for surrender of the fair price shop. We have no reason to doubt the said finding reached by the Assistant Registrar of the Co-operative Societies.

4. In view of the fact that the society had not passed any resolution for surrender of the fair price shop, obviously the letter written by the then chairman stated that the society had resolved to surrender the fair price shop was not legal. Under the bye-laws of the society, the chairman alone had no power to surrender the fair price shop. The respondent no.1 - Tahsildar, therefore, ought not to have acted upon the letter of the then chairman of the society especially when the secretary of the society had pointed out to him that no such resolution was passed and the society had no intention of surrendering the fair price shop. The Tahsildar, therefore, could not have issued a public notification for allotment of the shop in the

village on the ground that the previous society had submitted a resignation.

5. A perusal of the notification dated 25th August 1998 discloses that it was issued in respect of the two shops. One in respect of the shop allegedly surrendered by the said society in Village Kolgaon and another in respect of a shop at village at Zare. We are not concerned with the shop at Zare and therefore we cannot quash the entire notification dated 25th August 1998 but need to quash only the part that relates to fair price shop at Village Kolgaon run by the society. Accordingly, the notification dated 25th August 1998 is partly quashed and set aside so far as it relates to the allotment of fair price shop at Village Kolgaon.

6. Rule is made absolute to the extent mentioned above. In the facts and circumstances of the case, parties shall bear and pay their own costs.

(D.G. KARNIK, J) **(S.B. MHASE, J)**